

REMARKS/ARGUMENTS

Claims 2, 3 and 27 are amended. Claims 2, 3, 5-19 and 27 are pending in this application. Claims 20-22 and 24-26 are presently withdrawn without prejudice, pending potential rejoinder.

Claim Rejections – 35 USC § 102

The rejection of claims 2, 6, and 8-10 under 35 U.S.C. 102(b) as being anticipated by WO 9941298 (WO'298; US 6685966 is English equivalent: '966) was maintained. In addition, the rejection of claims 3, and 11-18 under 35 U.S.C. 102(b) as being anticipated by WO 03033592 (WO '592) was maintained.

The Examiner acknowledges applicants' arguments but does not consider them persuasive due to the "open terminology to describe the contents of the nanoparticles (i.e. containing)." Applicants have amended the claims to utilize closed terminology (i.e. "consisting of" or "in the absence of any other ingredients") and request the Examiner reconsider the arguments presented in the September 12, 2008 response in light of the amended claims. Applicants respectfully maintain that the terms "primary nanoparticles" include any impurities or trace amounts of by-products that are normally produced in the production of nanoparticles.

Claim Rejections – 35 USC § 103

- 1. Claim 5 was rejected under 35 U.S.C. §103(a) as being unpatentable over WO 03033592 (WO'592) in view of US 3701745 ('745)*
- 2. Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over WO 9941298 (WO'298; US 6685966 is English equivalent: '966) in view of US 6159381 ('381)*

3. *Claim 19 was rejected under 35 U. S. C. §103(a) as being unpatentable over WO 9941298 (WO'298; US 6685966 is English equivalent: '966)*

The above rejections were all maintained. As discussed in the prior response, the nanoparticles disclosed in WO 03033592 or WO 9941298 are significantly different from the nanoparticles as described in the present application. Claims 5, 7 and 19 all depend from independent claims which have now been amended to a closed form thereby excluding the polymers, metallic external coating, or alkali earth metal hydroxide intermediate layer taught in the two primary references in these § 103 rejections. Applicants respectfully maintain that the §103 rejections are moot in light of the amendments to the present amendments to the claims.

New Grounds of Rejection

Claim Rejections – 35 USC § 112 -- New Grounds of Rejection

Claim 27 (page 5 of the Office Action states claim 24 but claim 27 is correct) was rejected under 35 U.S.C. §112, second paragraph, as unclear concerning the various ratios. Claim 27 has been rewritten for clarity.

Claim Rejections – 35 USC § 102

Claims 3, 11-12, 15 and 19 were rejected under 35 U.S.C. §102(b) as being unpatentable over WO 9941298 (WO'298; US 6685966 is English equivalent: '966)

Claim Rejections – 35 USC § 103

Claim [24 sic?] 27 was rejected under 35 U.S.C. §102(b) as being unpatentable over WO 9941298 (WO'298; US 6685966 is English equivalent: '966).

Applicants respectfully suggest that the above claims are moot in light of the present amendments to the claims.

The amendments to claims are in response to an express request by the examiner

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(37 CFR 1.116 (b)(1) and place the claims in position for allowance. Applicants respectfully request the entry and consideration of these claims.

CONCLUSION

If the Examiner has any questions or suggested Examiner's amendments, the Examiner is respectfully requested to call the undersigned.

The Commissioner is hereby authorized to charge any additional fees, or to credit any overpayment, to Deposit Account No. 50-3195.

Respectfully submitted,

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